IN THE

Supreme Court of the United States

OCTOBER TERM, 1925.

No. [redacted]291

THE UNITED STATES, Petitioner,

vs.

THE S. S. WHITE DENTAL MANUFACTURING COMPANY OF PENNSYLVANIA.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

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BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

Statement.

The United States is seeking writ of certiorari to review the judgment of the United States Court of Claims in this case and respondent opposes same on the ground that there is no error of law in said judgment, consequently there is no jurisdiction in this Court.

its return or for payment, recognized by established international practice, and before the end of 1918 the defeat of Germany made it reasonably certain that the claim had substantial value. The loss, if any, resulting from the sequestration was not ascertained in 1918, because the amount ultimately to be recovered was not known and the transaction was not completed.

ARGUMENT

I

A DEDUCTIBLE LOSS IS SUSTAINED ONLY WHEN THE LOSS IS REALIZED AS THE RESULT OF A CLOSED AND COMPLETED TRANSACTION

The statute provides for the deduction from gross income of "Losses sustained during the taxable year and not compensated for by insurance or otherwise." (1918 Act, Sec. 234 (a) (4).) That the loss is sustained only when the property is sold or otherwise disposed of and the transaction is closed and completed is the uniform holding of this Court and the other Federal courts. On this point this Court said:

> The Company owned many bonds, etc., payable at future dates, purchased at prices above their par values, and to amortize these premiums a fund was set up. It claimed that an addition to this fund should be deducted from gross receipts. The District Court thought the claim well founded, but the Circuit Court of Appeals took another view. Unless the addition amounted to a loss "actually sustained within the year" no

> deduction could be made therefor. Obviously, no actual ascertainable loss had occurred. All of the securities might have been sold thereafter above cost. The result of the venture could not be known until they were either sold or paid off.
>
> *New York Life Insurance Co.* v. *Edwards,* 271 U. S. 109, 116.

The same point was decided by the Circuit Court of Appeals for the Second Circuit in *New York Life Insurance Company* v. *Edwards,* 8 F. (2d) 851; also by the Circuit Court of Appeals for the Seventh Circuit in *Fink* v. *Northwestern Mutual Life Insurance Company,* 267 Fed. 968, 971, and by the United States District Court for the Southern District of New York in *Haviland* v. *Edwards,* 15 F. (2d) 445.

In the case of *United States* v. *Flannery,* 268 U. S. 98, this Court held that "gains derived" and "losses sustained" are correlative terms in the Revenue Acts in considering taxable gains and deductible losses. And there have been a number of cases in this and other Federal courts on the question of income or gains realized from transactions in which the same principle was laid down—that there is no income or realized profit by increase in book value before realization by actual sale or other disposition of the property.

In another case this Court said:

> Upon this the court held plaintiff to have been properly taxable, and upon nothing more; no income tax being assessable with

> respect to the 35 shares still retained, because although they were considered worth more, ex rights, than the $430 per share found to be their cost, the difference could not be regarded as a taxable profit unless or until realized by actual sale.
>
> *Miles* v. *Safe Deposit & Trust Co.*, 259 U. S. 247, 250, 251.

> The mere fact that property has advanced in value between the date of its acquisition and sale does not authorize the imposition of the tax on the amount of the advance. Mere advance in value in no sense constitutes the gains, profits, or income specified by the statute. It constitutes and can be treated merely as increase of capital.
>
> *Gray* v. *Darlington*, 15 Wall. 63, 66.

The United States District Court for Massachusetts also held that increase or decrease of merely book values of bonds was not gain or loss. *Lumber Mutual Fire Insurance Co.* v. *Malley*, 256 Fed. 383, 384.

And the Circuit Court of Appeals for the Third Circuit held the same. *Baldwin Locomotive Works* v. *McCoach*, 221 Fed. 59.

That the taxpayer enters on his books an increase or decrease of value is immaterial, as this Court said:

> Such books are no more than evidential, being neither indispensable nor conclusive. The decision must rest upon the actual facts, which in the present case are not in dispute.
>
> *Doyle* v. *Mitchell Brothers Co.*, 247 U. S. 179, 187.

The reenactment, without material change, of this provision by Congress, after the continuous and consistent construction of the provision by the Department, as in this case, and the issuance of the regulations to the same effect, is construed as an adoption by Congress of that construction.

The Corporation Excise Tax Law of August 5, 1909, c. 6, 36 Stat. 11, 113, provided for the deduction of "all losses actually sustained within the year and not compensated by insurance or otherwise, including a reasonable allowance for depreciation of property." This provision has been reenacted without material change in the Revenue Acts of 1913, 1916, 1918, 1921, 1924, and 1926.

The Government, under the Corporation Excise Tax Law of August 5, 1909, and under all of the Income-Tax Acts of 1913 and subsequent years, has consistently construed this provision as it construed it in this case, viz, that in order for a loss to be deductible it must have been realized by sale or other disposition of the property and it must be a closed and completed transaction.

The regulations issued by the Secretary of the Treasury under the authority of the various laws have always been to the same effect.

It was said by this Court:

> We have said that when the meaning of a statute is doubtful great weight should be given to the construction placed upon it by the department charged with its execution.

Robertson v. *Downing*, 127 U. S. 607; *United States* v. *Healey*, 160 U. S. 136. And we have decided that the reenactment by Congress, without change, of a statute, which had previously received long continued executive construction, is an adoption by Congress of such construction. *United States* v. *Falk*, 204 U. S. 143, 152.

Mr. Justice White and Mr. Justice Peckham concur solely because of the prior administrative construction.

United States v. *Hermanos y Compania*, 209 U. S. 337, 339.

And this Court has stated the law with regard to the effect of Government regulations:

It is settled by many recent decisions of this court that a regulation by a department of government, addressed to and reasonably adapted to the enforcement of an act of Congress, the administration of which is confided to such department, has the force and effect of law if it be not in conflict with express statutory provision. *United States* v. *Grimaud*, 220 U. S. 506; *United States* v. *Birdsall*, 233 U. S. 223, 231; *United States* v. *Smull*, 236 U. S. 405, 409, 411; *United States* v. *Morehead*, 243 U. S. 607.

Maryland Casualty Co. v. *United States*, 251 U. S. 342, 349.

And that the reenactment of the law should be taken as indicating a purpose to continue in force the existing law as interpreted by the Department, this Court said:

> We can find in this history no substantial basis for the contention that there was a legislative adoption of any settled administrative construction of the statute adverse to the position now taken by the Government. On the contrary, the enactment of the Revenue Act of 1918 without material change of the provision in question must, we think, be taken as indicating a purpose to continue in force the existing law as interpreted by the Attorney General (*United States* v. *G. Falk & Bro.*, 204 U. S. 143) * * *.
>
> *Provost* v. *United States*, 269 U. S. 443, 458.

See also *United States* v. *Anderson*, 269 U. S. 422.

It is submitted that it is the established law that under the Internal Revenue Acts a deductible loss is sustained only when the loss is realized by the transaction being closed and completed.

II

NO REALIZED LOSS WAS SUSTAINED BY THE RESPONDENT IN 1918 WITH RESPECT TO THE STOCK OF THE GERMAN COMPANY

The Court of Claims treated the entire book value of the original investment in the German company, amounting to $130,764.34, as a loss sustained in 1918, upon, and as the immediate result of, the sequestration in that year. It is perhaps unfortunate that the findings do not disclose proof of the German law governing the sequestration from which the legal effect of the sequestration could be

ing it returned or paid for was too remote for consideration. On this theory the loss of the entire investment was deductible in 1918, and whatever it realized or may realize from assets returned or payment made by Germany is to be considered a windfall, to be treated as income when received.

The position of the United States is that the sequestration did not leave the respondent with nothing. The prospect of return or payment was definite and substantial, and the loss, if any, to result from the sequestration could not be ascertained until the outcome of the claim for return or payment. Certainly if the German corporation was by the act of sequestration completely divested of title and ownership of the property sequestered there was substituted a claim or demand of substantial value. Although the prospect of realizing on that claim may have been dubious in March, 1918, by the end of the tax year December 31, 1918, it was evident that if Germany was financially able to, she would pay. If the value of that claim could have been definitely known in 1918, the loss, if any, might have been then definitely ascertained, but until the amount to be realized from the claim was settled the loss was not ascertained.

While there is something to be said in favor of the proposition that the mere act of sequestration gave the American company the right to charge off and treat as a completed, realized loss the then entire value of the German property, without regard

to the fact that it had a substantial expectation and claim of recovery, the more logical conclusion, and one which accords with the terms of the statute, is that the transaction had not reached a point prior to the award of the Mixed Claims Commission and the sale of the returned assets from which it could be ascertained with any degree of certainty what loss had been or would be sustained.

Respectfully submitted.

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APRIL, 1927.

The Court of Claims on November 9, 1925, entered its judgment in favor of respondent in the amount of $83,813.59 with interest thereon at the rate of six per cent per annum from November 14, 1923, to the date of the judgment (Rec. p. 68). The sole question for determination by the court in this case is whether any error of law has been made by the Court of Claims in granting judgment to the respondent, as this court is bound by the findings of fact made by the Court of Claims.

The Court of Claims found that under date of May 15, 1924, the Commissioner of Internal Revenue rejected the refund claim of respondent, filed under date of November 24, 1923, for the recovery of the sum of $83,813.59, paid as taxes by it under protest (Rec. pp. 57, 58).

The respondent's refund claim, rejected by the Commissioner of Internal Revenue, is that the assessment made by the Commissioner and paid by respondent under protest—

> "is based upon an erroneous and illegal assessment, as said assessment is based upon Committee on Appeals and Review Recommendation No. 3075 of the United States Internal Revenue Bureau that losses of this corporation in 1918 amounting to $130,764.34 by reason of sequestration of its property 'The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany,' by the Imperial German Government be disallowed. This taxpayer contends that it should not have been required to pay said assessment based on said losses as set forth in Bureau of Internal Revenue's letter of Septem-

ber 5, 1923, signed by J. G. Bright, Deputy Commissioner, initialed IT:CA:M-2.

CEO-2114-4 A pp. This taxpayer insists that it has shown to the Bureau of Internal Revenue its loss in 1918 under subsection 4 of Section 234 of the Revenue Act of 1918 and therefore the amount of $83,813.59 is refundable to it." (Rec. pp. 57, 58.)

Respondent filed its suit in the Court of Claims on July 24, 1924 (Rec. p. 3), a short time after the rejection of its refund claim under date of May 15, 1924 (Rec. p. 58).

It is shown by the findings of fact that respondent made an original and amended income and profits tax return for 1918 to the Commissioner of Internal Revenue in which it deducted in its said amended income and profits tax return the sum of $130,764.34 for the year 1918, being the value of all the assets of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Company of Pennsylvania in 1918, which is known as respondent's Berlin loss, for the reason that on March 19, 1918, the German sequestrator seized and sequestrated the property of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, which consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said Company (Rec. pp. 50, 51).

Respondent, The S. S. White Dental Manufacturing Company of Pennsylvania, was the sole owner of The

S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, at the date of sequestration by the Imperial German Government of The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, and at said date of sequestration the amount of the investment of The S. S. White Dental Manufacturing Company of Pennsylvania, as shown by its books, was $130,764.34 in The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany. On account of said sequestration of its company, The S. S. White Dental Manufacturing Company, m. b. h. of Berlin, Germany, the parent corporation, The S. S. White Dental Manufacturing Company of Pennsylvania, charged off its books in the year 1918 the sum of $130,764.34 appearing on its books as a loss.

The order of sequestration of the German Sequestrator is clear, positive, and sweeping in character and is a very complete document of sequestration and leaves nothing for conjecture. It is:

"Meyers & Co.

Import-Export Commission.

Telephone: Centrum 5110.

Cable Address: Meyers Comp. Wilhelmstr. 42b.
ABC code, 5th edition, used.

Berlin W. 66. Mar. 19, 1918. Wilhelmstr. 42B.

Mr. HERMAN UBERT,
Berlin-Scheneberg, Sponholzstr. 1:

"Hereby I wish to inform you and request you to take note of it that I have been appointed by the Minister of Commerce and Manufactur-

ers as Sequestrator of the concern The S. S. White Dental Manufacturing Company, m. b. h.

"At the same time I wish to inform you hereby that from this day on further purchases in any articles are not allowed any longer and deliveries and sales are to be made from the stock on hand. Orders for which no goods are on hand must remain unfilled. The other business transactions shall be continued until further in the same manner as heretofore. About the business in general I wish to be advised every two days, about special matters at once.

"As to the incoming money and the depositing of same with the bank, all necessary signatures must be given by me. Eventually I will give you power of attorney to receive money. The bank has also been advised of the above.

"Yours truly,

(Signed) "EMIL MEYERS,

"In the Firm of Meyers & Co."

Under the above order of sequestration the property seized and sequestrated by the sequestrator consisted of fixtures, cash, book accounts, merchandise stock, and accounts due and owing the said company (Rec. pp. 50, 51).

The Court of Claims also found that:

> "The Berlin store is operated by a German corporation formed expressly for such purpose and owned entirely by the taxpayer."

and

> "The Berlin business was practically suspended during the years 1917 and 1918 on account of the war, and the seizure of the property by the German Government, as heretofore stated."

The Court of Claims further found that:

"On March 19, 1918, the sequestrator appointed by the German Government took over the taxpayer's property and investment in its branch in Berlin. (Copy of the sequestrator's letter is attached.) This sequestration apparently corresponds to the taking over of the property of enemy aliens in the U. S. by the Alien Property Custodian.

"The investment in the Berlin branch at Dec. 31, 1915, at which time the last authentic report was received, stood as follows:

General investment		$108,718 08
Capital stock		15,000 00
Furn. & fix	$7,829 16	
Less rept. depr	782 90	
		7,046 26
Total		$130,764 34"

(Rec. pp. 53, 54.)

Reserves were set up by respondent under date of July 29, 1918, as shown in the findings of the Court of Claims as follows:

"The S. S. White Dental Mfg. Co.

(Extracts from Minutes.)

Stated Meeting, Board of Directors, November 25, 1918. The S. S. White Dental Mfg. Co., m. b. h.

"The president reported he had referred to our counsel the matter of filing claim with the proper department of our Government for the

repayment to us of our loss in connection with this property arising out of its confiscation by the German Government.

* * * * * * *

"The S. S. White Dental Mfg. Co.

(Extract from Minutes.)

Stated Meeting, Board of Directors, July 29, 1918. The S. S. White Dental Mfg. Co., m. b. h. Berlin.

"Whereas The S. S. White Dental Mfg. Co., m. b. h., Berlin, represents the following investments in this company's assets as of December 31, 1917:

A-19, capital stock		$15,000 00
B-28, furniture & fixtures		7,046 26
B-17 open accounts	$127,670 75	
Less formerly adjusted	18,952 67	
		108,718 08
		130,764 34"

and

"Whereas in 1916 there was charged as a reserve against this amount the sum of $20,000; and

"Whereas under continued condition of war the loss will, in the judgment of this board, soon be complete:

"Resolved, That additional reserves be set up on the following basis, viz, $15,000 quarterly, beginning March, 1918, until liquidated."

Respondent insists that the rejection of its said refund claim by the Commissioner of Internal Revenue

on May 15, 1924, is erroneous and unjust and not warranted by law, as this respondent strongly insists that it has conclusively shown to the Commissioner of Internal Revenue that its Berlin loss set forth in its United States income and profits tax return and amended income and profits tax return for the year 1918 was an actual and deductible loss sustained in 1918 and not compensated for by insurance or otherwise in 1918, under subsection 4 of Section 234 of the 1918 Internal Revenue Act, for

> "(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise"

are deductible losses.

The confiscation of this respondent's property on March 19, 1918, by the Imperial German Government, the setting up of reserves by the respondent on July 29, 1918, to take care of its Berlin loss occasioned by the said act of confiscation by the Imperial German Government on March 19, 1918, and the writing off by the respondent of its said Berlin loss on its books by this respondent in 1918, which was sustained by it in 1918, as well as deducting its said Berlin loss in its United States income and profits tax return and amended income and profits tax return for 1918, and that its said Berlin loss was not compensated for by insurance or otherwise in 1918, this respondent, by the aforesaid, strongly insists that it has shown a full compliance with subsection 4 of Section 234 of the Internal Revenue Act of 1918 in the deduction of its said Berlin

loss in its United States income and profits tax return and amended income and profits tax return for the year 1918.

The Court of Claims in an unanimous opinion said in part:

> "As there is no controversy with respect to the correctness of the amount of tax assessed and collected, the only question for determination is whether or not the plaintiff suffered a deductible loss during the calendar year 1918 within the meaning of the statute above quoted.
>
> "It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918."
>
> * * * * * * *
>
> "Losses, which are deductible, it is said, 'must be evidenced by closed and completed transactions.' Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms."
>
> (Rec. pp. 67, 68.)

ARGUMENT.

Question for Determination.

The sole question for determination by the court is as to whether any error of law has been made by the Court of Claims in its application of the law to its findings of fact in this case.

Findings of Fact in Nature of Special Verdict.

This court has repeatedly held that the findings of fact made by the Court of Claims are to be treated like the verdict of a jury. Mr. Justice Pitney, in the case of Brothers vs. United States, in 250 U. S. 88, said:

> "For the purposes of our review the findings of that court are to be treated like the verdict of a jury, and we are not at liberty to refer to the evidence, any more than to the opinion, for the purpose of eking out, controlling, or modifying their scope. United States v. Smith, 94 U. S. 214, 218, 24 L. ed. 115; Stone v. United States, 164 U. S. 380, 382, 41 L. ed. 477, 478, 17 Sup. Ct. Rep. 71; District of Columbia v. Barnes, 197 U. S. 146, 150, 49 L. ed. 699, 700, 25 Sup. Ct. Rep. 401; Crocker v. United States, 240 U. S. 74, 78, 60 L. ed. 533, 536, 36 Sup. Ct. Rep. 245, and cases cited."

It will, therefore, be seen that the findings of fact made by the Court of Claims are binding upon the parties.

Alleged Reasons of Petitioner.

Petitioner states in its petition:

> "1. In the view of the petitioner the Court of Claims erred in deciding in effect that the claimant could take a deduction for a loss not evidenced by a closed and completed transaction."
> (Rec. p. 3.)

Respondent states that the Court of Claims did not decide in effect "that the claimant could take a deduction for a loss not evidenced by a closed and completed transaction," but, on the contrary, the Court very positively stated:

> "Losses, which are deductible, it is said, 'must be evidenced by closed and completed transactions.' Certainly this transaction was closed and completed in 1918; it remains completed so far as the loss of the plaintiff is concerned. That is surely complete and has continued to be complete from that time to this. In the construction of statutes common sense must at times be applied, and the facts in this case lead to but one conclusion, which is that the plaintiff suffered such a loss as the statute contemplated when losses were made deductible by its terms."
> (Rec. p. 68.)

In alleged reason two of the petitioner (Rec. p. 3) it doesn't even say the Court of Claims erred about anything, but states:

> "2. The Internal Revenue Bureau has always provided in its regulations, which it has consistently carried out, that no loss could be de-

> ducted unless it was actually sustained, as evidenced by a closed and completed transaction. There are practically no decisions of the courts on this point.
>
> "The question involved is an important one, as it will affect all taxpayers who had property in Germany seized by that Government and who presented claims to the Mixed Claims Commission. The amount involved is very large even in the narrow field of this class of taxpayers, but the decision may reach all claims for refund based on losses sustained."
>
> (Rec. p. 3.)

The question for this court is not how

> "it will affect all taxpayers who had property in Germany seized by that Government and who presented claims to the Mixed Claims Commission"

but what error of law, if any, is patent on the face of the record in this case. The question herein is one involving the determination of a loss under the taxing statute, and has nothing to do with the presentation of claims to the Mixed Claims Commission.

Sequestered and Confiscated.

The petitioner has attempted to show that "Sequestered and confiscated are not synonymous." It has set forth a definition from Webster's Dictionary of the word "sequester" in contemplation of international law, as follows:

> "To appropriate under the right of pre-emption."

With reference to the above definition, the petitioner has evidently overlooked the entire definition of "sequester" as set forth in Webster's New International Dictionary, 1923 edition, at page 1924, where the word "sequester" under international law is defined "*to confiscate or seize* and appropriate under the right of pre-emption."

It will thus be seen that to "sequester" property in international law is to confiscate it, and this is also stated by the Standard Dictionary, 1923 edition, page 2231.

The definition of "sequester" is also given by the petitioner as:

> "The right of belligerents to seize and purchase at an appraised price, contraband other than absolute contraband."

It would appear from Webster's New International Dictionary, 1923 edition, page 1694, that the above definition set forth by the petitioner is the definition of not the word sequestration but "pre-emption" under international law, for "pre-emption" is defined:

> "The right of a belligerent to seize and purchase at an appraised price other contraband of war than absolute contraband belonging to a neutral and enroute to the enemy in its own territory or on the high seas or in unappropriated territory."

Petitioner further states that Webster defines the word "confiscate":

> "To cause a person to forfeit property to the state."

In addition to the above, Webster's New International Dictionary, 1923 edition, page 470, also defines "confiscate":

> "Seized and appropriated by the government to public use; forfeited."
>
> * * * * * * *
>
> "To seize as forfeited to the public treasury; to appropriate to the public use."

Petitioner states:

> "The property sequestered by the German Government in the instant case was taken over by that Government through the sequestration during the period of hostilities and the record does not disclose or indicate that respondent's title to the property was thereby forfeited or that the German Government in any way indicated its nonliability for damage or loss resulting therefrom."
>
> (Brief p. 6.)

From the definitions of sequestration heretofore shown and the actual sequestration of respondent's property in 1918, it is self-evident that the property was a loss in 1918 to respondent, as the Court of Claims found the asset had passed from respondent's title and control, and therefore the reasoning of the petitioner as above set forth is unsound.

The petitioner fails to distinguish between the existence of a loss under the taxing statute and the possibility of a claim before the Mixed Claims Commission, for it states:

> "The property was returned to the respondent by the German Government after the cessation of hostilities and, as hereafter shown, the right was possessed by respondent to compensation for the loss sustained on account of such sequestration of its property."
>
> (Brief p. 6.)

The petitioner in the aforesaid states:

> "the right was possessed by ~~claimant~~ respondent to compensation for the loss sustained on account of such sequestration of property."

From this language used by the petitioner it is quite clear that the fact that respondent *had a loss in 1918* under the taxing statute is recognized by the petitioner, and it is difficult to see why a loss thus recognized should not have been deducted by the respondent in its 1918 income and profits tax return, as the Court of Claims has found that respondent was entitled to do.

The petitioner also states:

> "It is apparent, therefore, that at the time the respondent's property was sequestered in 1918 it was not definitely known whether or not ultimately there would be a loss, and if so, the amount thereof. * * * The transaction was not closed and completed during the year 1918 and no loss was definitely sustained during the year in which respondent sought to take its deduction."
>
> (Brief p. 6.)

In this statement is an admission that "the respondent's property was sequestered in 1918," but then fol-

lows this remarkable statement: "It was not definitely known whether or not ultimately there would be a loss." The findings of the Court of Claims show that the property was sequestered in 1918, reserves were set up on July 29, 1918, and the then known investment of $110,764.34 of respondent in the Berlin Corporation was written off the books of the respondent as a loss. This loss was subsequently amended by an addition of $20,000, to a total of $130,764.34, as the Internal Revenue Agent restored to respondent's assets the sum of $20,000 charged off as depreciation in value by The S. S. White Dental Manufacturing Company of Pennsylvania in its 1916 income tax return. It is not, therefore, apparent how such a statement of the petitioner as above set forth can be supported. If the "transaction was not closed or completed during the year 1918," as contended by the petitioner, then how could a loss such as this ever be determined under the taxing statute?

Respondent had a Loss in 1918.

The Court of Claims said in the instant case:

> "It must be admitted that the effect of the action of the German Government was to cause the plaintiff to lose control of and title to the property in March, 1918; it followed that the property was lost to the plaintiff, and there was no means open to it by which it could or did regain control of or title to the property during the year 1918."
>
> (Rec. p. 68.)

The Supreme Court of Hawaii in 14th Hawaii, 601, Hawaiian Commercial and Sugar Company, Limited, vs. Tax Assessor and Collector in interpreting a statute similar in part to subsection 4 of Section 234 of the 1918 Revenue Law being Section 4 of the Hawaii territory income tax law which reads in part as follows:

> "The net profits or income of all corporations shall include the amounts paid or payable to, or distributed or distributable among shareholders from any fund or account, or carried to the account of any fund or used for construction, enlargement of plants, or any other expenditure or investment paid from the net annual profits made or acquired by said corporation. In computing incomes, the necessary expenses actually incurred in carrying on any business, trade, profession or occupation or in managing any property, shall be deducted, and also all interest paid by such corporation on existing indebtedness. * * * Also *all losses actually sustained during the year incurred in trade or arising from losses by fire not covered by insurance, or losses otherwise actually incurred:* Provided, that no deduction shall be made for any amount paid for new buildings, permanent improvements or betterments made to increase the value of any property or estate."

The court defined a loss under said statute as follows:

> "The word 'loss,' and its plural, 'losses,' used in the statute, is not a technical term of art or trade, but a simple word in common use. There is nothing to indicate that these words are used in the statute to express any other than their

ordinary meaning. The dictionary definition of the noun 'loss' is:

"'Failure to hold, keep, or preserve what one has had in possession; deprivation of that which one has had; as the loss of money by gaming; loss of health; of reputation; loss of children; opposed to gain.' Cent. Dict.

"The central idea in each of these definitions is involuntary parting with a thing. If property is lost it has passed from the control and out of the possession of the loser. No one can lose property and still have it in his possession and be conscious of the fact that he has it."

The petitioner states:

"While, as pointed out, in the statement of the case (page 1, petition and transcript of record), the Court of Claims in Finding II (R. 51) stated that the investment was charged off the books in 1918, what was meant by Finding II is disclosed in Finding VIII (R. 55), which shows that in 1916 $20,000 had been set up as a reserve for losses on the investment of $130,764.34, and it was resolved in 1918 'that additional reserves be set up on the following basis, viz, $15,000 quarterly, beginning March, 1918, *until liquidated.*' (Italics ours.) This seems clearly to indicate that the net value of the investment, as shown on the books, was reduced in 1916, before the seizure, to $110,000, and it was further reduced, as a result of the seizure, $60,000 in 1918, and the balance in 1919. This appears to indicate that the company did not regard all the property as *lost* in 1918."

(Brief p. 7.)

How the above statement can be deduced from the findings of the Court of Claims is not understood. It is very clearly stated in Finding VI (Rec. p. 53):

> "Under date of January 15, 1921, Mr. W. W. Tomb, internal revenue agent of the Bureau of Internal Revenue, Treasury Department, submitted a report to the United States Bureau of Internal Revenue of an investigation made by him of the income and profits tax liability of the parent corporation, The S. S. White Dental Manufacturing Co. of Pennsylvania, for the years 1916, 1917, and 1918, and in said report he disallowed the amount which plaintiff contends was the loss sustained by it in 1918 and shown in its original United States income and profits tax return for the year 1918 as $110,764.34 on account of the amount invested by it in The S. S. White Dental Manufacturing Co., m. b. h., of Berlin, Germany, which amount is increased to $130,764.34, as shown by its amended income and profits tax return for 1918, by reason of the fact that said agent, Tomb, restored to the assets the sum of $20,000 charged off as depreciation in value by The S. S. White Dental Manufacturing Co. of Pennsylvania in its 1916 United States income-tax return."
>
> (Rec. p. 53.)

The petitioner states:

> "it was further reduced, as a result of the seizure, $60,000 in 1918, and the balance in 1919. This appears to indicate that the company did not regard all the property as lost in 1918."

Respondent challenges petitioner to show the above anywhere in the findings of the Court of Claims. Find-

ing 17 of the Court of Claims shows that respondent's loss was greater than claimed by it, for it found:

> "Item No. 1. Investment in German company as of March 18, 1918, date of sequestration, $167,033.03, less proceeds of sale of German company, $6,000 . . . . $161,033.03"
> (Rec. p. 58.)

The reason respondent could not make a larger claim is shown by Finding 2:

> "deducted as a loss in its said United States income and profits-tax return the sum of $110,764.34, and in its amended income and profits tax return it deducted $130,764.34 for the year 1918, made to the said United States Commissioner of Internal Revenue, being the value of all the assets of The S. S. White Dental Manufacturing Co., m. b. h. of Berlin, Germany, which were shown on the books of The S. S. White Dental Manufacturing Co. of Pennsylvania in 1918."
>
> **(Rec. p. 50.)**

This court is requested by the petitioner to put aside the findings of the Court of Claims and enter into the realm of speculation and conjecture for it states:

> "Finally, the events of 1918, of which the Court may take judicial notice, will further indicate that there was no loss sustained in 1918, Germany was defeated in 1918, *and before the end of that year it was certain that she would be made to return seized American property and*

> *pay for that part of it lost or damaged, to the extent she was financially able to pay.*" (Italics ours.)
>
> (Brief p. 7.)

Would not the foregoing show that there were losses? We submit that it would. There is nothing in the Armistice Agreement, the Treaty between the United States and Germany, the Treaty of Versailles, or the agreement creating the Mixed Claims Commission that in anyway deals with the question that as to whether:

> "Losses sustained in the taxable year and not compensated for by insurance or otherwise"

are deductible losses. It is solely a question of deductibility of a loss under the Internal Revenue Act of 1918.

Petitioner states:

> "Thus in November, 1918, so far as it might be done, it had been provided that the respondent would be compensated. There was therefore no justification for a claimed loss for that year."
>
> (Rec. p. 9.)

The Court of Claims answers the foregoing in its opinion:

> "It seems the commissioner loses sight of the fact that the plaintiff will only receive from Germany the sum of $70,000 and when it will receive that is wholly problematical;"
>
> (Rec. p. 68.)

"The Meaning of the Word 'Losses' as Used in the Revenue Act of 1918."

At the outset, under this heading, we respectfully call to the court's attention the evident attempt of petitioner to confuse the question of loss with the question of bad debts. The question of bad debts was not an issue in this case, and the question at issue was one of loss.

The petitioner states:

> "While the statute does not expressly provide that deductions for losses shall be evidenced by closed and completed transactions, it does in effect so provide with respect to deductions on account of worthless debts, since it provides that debts to be deductible must be ascertained to be worthless and must be charged off within the taxable year, thus constituting a closed and completed transaction."
>
> (Petition p. 9.)

The question was, When does a loss of property become a loss under the taxing statute?

The petitioner admits that—

> "the statute does not expressly provide that deductions for losses shall be evidenced by closed and completed transactions,"

therefore, there can be but one construction of the statute that when an actual loss is sustained *in any taxable year* which is not compensated for by insurance or otherwise *in that year,* it is a deductible loss; unless

it appears that there was compensation then there is no loss—therefore, both loss and failure of compensation must be in the same year.

We are not herein concerned with the provisions of what the statute says or with the rulings of the United States Board of Tax Appeals with respect to charging off bad debts. That question has no place in the discussion of the issues of this case, and for that reason the cases cited in the petitioner's brief on this point, have no bearing upon any issue in the present case.

In the Appeal of Greenville Textile Supply Company, 1., B. T. A. 152, cited by the petitioner, the Board gave scant consideration to the bad debt features of the case and Commissioner Trammell in his opinion, page 154, disposed of it as follows:

> "From the facts, it appears that the debts charged off by the taxpayer were in fact not debts ascertained to be worthless during the taxable year."

Further, the Appeal of Steele Cotton Mill Company, 1., B. T. A. 299, also cited by petitioner, has no relation to the issues of the instant case for the Board found:

> "The evidence shows that the debt was incurred July 14, 1920; that a part payment of $4,000 was made on October 9, 1920; that on December 16, 1920, a conference was had between the directors of the Piedmont Commission Co. and the taxpayer, whereat the taxpayer agreed to accept promissory notes, indorsed by the individual directors, in the amount of $18,712.68 in full settlement of its claim; that the notes

were not delivered on the day following the conference; that between December 16 and December 31, 1920, the taxpayer made two demands for delivery of the notes but received no reply; that on December 31, 1920, it charged off the full amount of the debt as worthless. It also shows that the taxpayer made no endeavor to ascertain the actual assets of the Piedmont Commission Co.; that the men who composed the directorate of the company were men of high integrity, financial responsibility, and prominence in business in North Carolina, and that they did not desire the company forced into bankruptcy; that the taxpayer did not seek out or confer with any of the directors to ascertain whether or not the promised note would be delivered or what was the cause of the delay in delivery. A summing up of these facts shows that the taxpayer reached its conclusion as to the worthlessness of the debts upon the facts that the notes were not delivered within 14 days after the conference with the directors and that it had received no reply to one letter and one telegram sent some time after December 17, 1920. Before a taxpayer is entitled to take a deduction for a 'debt ascertained to be worthless,' he must take reasonable steps to determine that there is no probability of payment or collection and have *prima facie* evidence to prove that the debt has no value. Under the facts shown in this appeal, the time was too limited and the endeavor too restricted for us to consider that the taxpayer had thoroughly investigated the resources of the Piedmont Commission Co. or that sufficient effort had been made to make sure that the compromise agreement would not be fulfilled or that the company

could not or would not pay. This taxpayer has not made a showing which would entitle it to consideration under this test, and its first contention must be denied."

The Appeal of C. S. Webb, Inc., I. B. T. A. 269, referred to by petitioner, has nothing to do with the issues of the instant case. The Board in its opinion stated:

"The first question involved in this appeal is whether the taxpayer was entitled to deduct the amount of $37,926.75 from its income for the year ended June 30, 1919, as a bad debt ascertained to be worthless and written off its books in the year in question. It is the opinion of the Board that the taxpayer has failed to show that any serious effort was ever made to collect the amount in controversy. On the contrary, it is admitted that C. S. Webb, Inc., decided, for business reasons that seemed good to its stockholders, that it would not attempt to secure collection from C. S. Webb and his two associates and that it would absorb the entire loss.

"The Board is of the opinion that the loss claimed by the taxpayer as a deduction from its income for the year ended June 30, 1919, could have been collected. C. S. Webb owned 50 per centum of the capital stock of the taxpayer, which was so prosperous during the year in question that it earned a net income of $102,907.75 on a capital investment of $200,331.04. It is reasonably certain that the whole debt could have been collected from C. S. Webb. The other two parties to the Hartzog transaction were business men of South Carolina, and each of them was an officer of a cotton mill. It may be

> that neither C. S. Webb nor either of his partners in the Hartzog transaction was able to pay all or even his proper share of the loss that is claimed by the taxpayer as a bad debt, but no evidence to that effect was adduced at the hearing before the Board."

In the Appeal of Alemite Die Casting and Manufacturing Company, I. B. T. A. 548, cited by petitioner, the Board said in part:

> "Sec. 234 (a) (5) of the Revenue Act of 1918 contemplates that before a taxpayer can charge a debt off and deduct it from gross income it must be determined to be worthless. That determination must be based upon facts. We are of the opinion that the evidence is not sufficient to establish worthlessness. The debts appear to have been charged off because a lawyer thought that collection thereof was doubtful, but the facts to justify such opinion are not before us. The only evidence before us as to the debt of the National Projector and Film Corporation is that counsel made an investigation, the nature of which is not disclosed by the evidence, which led him to believe the debtor insolvent and collection doubtful. There is no evidence that taxpayer had any information as to the assets of the debtor or as to whether the account would or would not be paid."

This case also has nothing to do with the issues of this case. The Board in the Appeal of Harry Gottlieb, I. B. T. A. 674, also cited by petitioner, said:

> "It does not appear whether the taxpayer claimed the deduction in dispute in his original

return for 1920 or only in a report compiled in 1923 after audit by a field agent had demonstrated the necessity of a complete reconstruction of his accounts.

"Without going into the question whether a taxpayer may regard a debt as worthless for tax purposes and be allowed a deduction therefor at the same time that he continues to regard it as an asset for the purpose of obtaining credit and otherwise utilizing it in his business, it is sufficient for us to say that the testimony adduced on behalf of the taxpayer was so indefinite in many respects and to such an extent in conflict with exhibits filed, both on his own behalf and by the Commissioner, that it failed to convince us that he did in good faith ascertain the debts to be worthless during 1920. With respect to one of them, an affidavit filed by him in proceedings before the Commissioner admits that he collected a substantial proportion in October, 1922, although from his testimony before us it would appear that he desired to give us the impression that he had never received anything on account of it. He presented as an exhibit for the purpose of showing that he had not filed a claim in bankruptcy against this debtor a list of claims proven, upon which his name does not appear, but the certificate of the clerk of the bankruptcy court annexed thereto shows that it is only a copy of the second page of the schedule of distribution. Another similar schedule of distribution offered proved to be likewise fragmentary.

"In all the circumstances we feel that the taxpayer has not proven his case and that the determination of the Commissioner must be allowed to stand."

The petitioner further attempts to write into the taxing statute that which is not to be found there, as follows:

> "Thus, where a taxpayer involuntarily parts with the possession of physical or tangible property, and in the ordinary sense has sustained a loss of that property, but concurrently therewith a claim arises in favor of the taxpayer for compensation therefor, and a reasonable expectancy exists for the recovery of such compensation, then a deductible loss under the Revenue Act has not occurred, for the reason that the transaction is in effect only a conversion of a tangible asset into an intangible asset, and the taxpayer's net worth remains the same."
>
> (Brief p. 11.)

No concurrent claim for compensation arose in 1918, for there was no sovereignty against which such a claim could then have been presented, and no method then existed for presenting such a claim even if there had been a responsible sovereignty.

And the petitioner further states:

> "If thereafter it be determined that the claim for compensation has become worthless, as through the insolvency of the debtor or by arbitrary refusal of a sovereign government to make restitution or allow compensation, or the claim is otherwise determined to be uncollectible, a deductible loss would thereupon and at that time be sustained by the taxpayer with respect to such claim or intangible asset."
>
> (Brief pp. 11-12.)

This conclusion is based on occurrences long subsequent to 1918. The question must be limited to the facts in 1918, as they are admitted and found by the court, and it will be observed that not one authority is cited by the petitioner for the above statement. In view of this reasoning, we ask what becomes of subsection 4 of Section 234 of the 1918 Revenue Act? What would happen to the loss of a claimant if compensation did not occur until after the five-year limitation in the 1918 Act had expired? In other words, the petitioner ignores the provisions of Section 252 of the 1918 Act as follows:

> "Sec. 252. That if, upon examination of any return of income made pursuant to this Act, the Act of August 5, 1909, entitled 'An act to provide revenue, equalize duties, and encourage the industries of the United States, and for other purposes,' the Act of October 3, 1913, entitled 'An act to reduce tariff duties and to provide revenue for the Government, and for other purposes,' the Revenue Act of 1916, as amended, or the Revenue Act of 1917, it appears that an amount of income, war profits or excess-profits tax has been paid in excess of that properly due then notwithstanding the provisions of section 3228 of the Revised Statutes, the amount of the excess shall be credited against any income, war-profits or excess-profits taxes, or installment thereof, then due from the taxpayer under any other return, and any balance of such excess shall be immediately refunded to the taxpayer: *Provided, That no such credit or refund shall be allowed or made after five years from the date*

when the return was due, unless before the expiration of such five years a claim therefor is filed by the taxpayer." (Italics ours.)

It is plain that such a claim would be barred by the statute of limitations. Losses under the statute of 1918 must be deducted in the year sustained unless compensated for by insurance or otherwise in that year and not upon the theory of the petitioner, based upon conditions not then, in 1918, existing and in no way capable of anticipation.

Why the Distinction Between the Time when a "Loss" is "Sustained" and the Ascertainment or Determination of the Amount of Such Loss?

The petitioner states:

> "Section 234 (a) (4) of the Revenue Act of 1918 provides that, in computing the net income of a corporation, there shall be allowed as deduction 'losses sustained during the taxable year and not compensated for by insurance or otherwise.' In the instant case respondent seeks to construe the provision above quoted as meaning that the loss must be compensated for during the taxable year in order to prevent its being deductible, thus in effect making the provision in question read 'losses sustained during the taxable year and not compensated for during the taxable year by insurance or otherwise."
>
> (Brief p. 12.)

The above is a correct statement of respondent's interpretation of the Act. The petitioner, however,

endeavors to evade the law on a theory and not upon the facts as known, saying:

> "The vice of such a construction is at once apparent upon consideration of the results which would flow therefrom. Such a construction would inevitably lead to unjust discrimination and the unequal assessment and collection of taxes in the cases of taxpayers similarly situated with respect to losses sustained during the same taxable year. For example, if A sustained a loss by fire during the month of December, 1918, such loss being compensated by insurance, if the compensation was received by A before the expiration of the year 1918, clearly no deductible loss would be sustained. If B sustained a loss by fire at the same time and under the same circumstances, but his loss was not compensated by insurance during the taxable year, although a claim in his favor may have arisen at the time, he would be entitled, under the construction of the statute urged by respondent, to deduct the amount of such losses and thereafter treat the compensation as taxable income for the year in which received. If such compensation was so received by B after Congress had provided lower rates of taxation in the Revenue Act of 1921, or the Revenue Act of 1924, this would result in the payment of a proportionately less tax by B than by A, notwithstanding the only difference with respect to their losses was the fact that A received compensation for his loss during the taxable year 1918, whereas B received compensation for his loss in a subsequent year. This in effect is the result sought by respondent in its action herein. Clearly such was not the intent of Congress.

> Further, it is confidently asserted that the language used in the statute does not require, and indeed will not permit, such a construction to be placed thereon."
>
> (Brief pp. 12, 13.)

We respectfully submit, in answer to the above, that the construction placed by respondent on the statute in question and set forth in its brief is in line with the intent of Congress and follows the statute. Moreover, if no claim can be made until the amount of the loss is finally ascertained, as contended by petitioner, Congress might in the meantime raise the tax, which would result in the payment of a higher tax by B than A in the example given by the petitioner. Thus the same inequitable result, as between A and B, might flow from the petitioner's interpretation of the taxing statute.

Again we find this strange reasoning of the petitioner:

> "The Revenue Act of 1918 imposes no duty upon the taxpayer to determine the loss and charge same off his books during the taxable year as in the case of a bad debt, or to set up reserves to liquidate it, in order to constitute a deductible loss." (Brief p. 14.)

The Revenue Act of 1918, it will be observed, imposes upon the taxpayer the important duty of correctly determining its true net income under that Act, and in doing that the law provides:

> "(a) That in computing the net income of a corporation subject to the tax imposed by Section 230 there shall be allowed as deductions:
> * * *

> "(4) Losses sustained during the taxable year and not compensated for by insurance or otherwise."
>
> (Rec. p. 67.)

Respondent had a loss in 1918, as is conclusively shown in the findings of the court and it was therefore encumbent upon respondent to charge it off its books in 1918 to determine its true net income for that year.

Again petitioner says:

> "but if the amount of such loss is definitely ascertainable by any reasonable method of computation and it *appears to be a final loss*, not compensated by insurance or otherwise, the taxpayer sustained the loss during the year 1918. He is therefore entitled to deduct such loss from his taxable income for that year." (Italics ours.)
>
> (Brief p. 14.)

There is nothing in the Revenue Act of 1918 as to a "final loss"? There is no such term in the law. The Act says "losses," and "not final loss." The use of the term "final loss" is a pure invention, unless it means a loss sustained in a taxable year and not compensated for by insurance or otherwise; in this sense we accept it; the loss was final in 1918 and, being thus ascertained, was deductible.

Petitioner further states:

> "In the instant case the facts, as found, show that respondent did not sustain a loss during the year 1918 by reason of the sequestration of the property of the Berlin Company by the German Government, not compensated by in-

> surance or otherwise, and evidenced by a closed and completed transaction. On the contrary, the facts show that, concurrently with the sequestration of the property of its Berlin Company, a claim arose in favor of respondent against the German Government *for any loss* resulting therefrom." (Italics ours.)
>
> (Brief pp. 14, 15.)

We shall answer the two propositions separately. To the first statement that—

> "In the instant case the facts, as found, show that respondent did not sustain a loss during the year 1918 by reason of the sequestration of the property of the Berlin Company by the German Government, not compensated by insurance or otherwise, and evidenced by a closed and completed transaction."
>
> (Brief pp. 14, 15.)

we unhesitatingly say that the findings of the court show a loss by respondent by reason of the sequestration of its Berlin Corporation in 1918, and we have heretofore pointed out wherein the court shows respondent did suffer a loss. The property of this respondent was sequestered on March 19, 1918; it was not compensated for by insurance or otherwise during that year, and was written off the books of respondent in 1918 and, so far as the year 1918 is concerned, it was a closed and completed transaction.

As to the second proposition of the petitioner that:

> "On the contrary, the facts show that, concurrently with the sequestration of the property of its Berlin Company, a claim arose in favor

> of respondent against the German Government for any loss resulting therefrom."
>
> (Brief pp. 14, 15.)

We deny this assertion; we have already discussed it. Did a "*claim*" arise "in favor of respondent against the German Government *for any loss* resulting therefrom" if, as petitioner insists, "respondent did not *sustain a loss* during the year 1918 by reason of the sequestration of the property"? Petitioner admits that "concurrently with the sequestration of the property" * * * "a claim arose" "for any loss," therefore petitioner admits that respondent had a *loss* in 1918 by the sequestration of its property by Germany.

Again the petitioner states:

> "that the property sequestered in 1918 was returned to respondent by the German Government in 1920, a part of which property it sold in 1922 for the sum of $6,000.00; that in 1923 respondent presented to the Mixed Claims Commission on account of its said loss a claim against Germany for the sum of $368,333.32, which was subsequently allowed by the Mixed Claims Commission in the sum of $70,000.00."
>
> (Brief p. 15.)

Let us analyze the above statement in the light of the findings of the court. Paragraph seventeen of the findings of the court contains the following:

> "Item No. 1. Investment in German company as of March 18, 1918, date of sequestration, $167,033.03, less proceeds of sale of German company, $6,000, $161,033.03."
>
> (Rec. p. 58.)

Paragraph eighteen of the findings of the court contains the following:

> "Item No. 1. This item of $161,033.03 represents the value of the physical assets of the German corporation as of March 18, 1918, the date of sequestration as shown by certified reports from the German company and reconciled with the books and records of the American company, less the sum of $6,000 salvage from the sale of the German company in February, 1922. It consisted of:

Cash	$60,565 80
Accounts receivable	50,739 75
Bills receivable	6,485 46
Furniture and fixtures	5,709 59
Merchandise inv.	47,910 69
Expenditures made by American Co. for German Co. not on German Co.'s books	914 49
	$172,325 78
Less accounts payable	5,292 75
	$167,033 03
Less salvage of German Co.	6,000 00
	$161,033 03"

(Rec. p. 62.)

This sale of what remained of its property for $6,000 is contained in paragraph eighteen of the findings of the court.

Again the petitioner states:

> "It is apparent, therefore that the act of sequestration in and of itself did not result in any loss to respondent during the year 1918, but merely resulted in the conversion of mixed assets (tangible and intangible) into an intangible asset." (Brief p. 15.)

If the act of sequestration resulted in the conversion of mixed assets (tangible and intangible) into an "intangible asset," then surely respondent had a loss, for Webster's New International Dictionary, 1923 edition, page 1121, defines "intangible" "Not tangible; incapable of being touched or perceived by touch." Respondent surely was incapable after March, 1918, of touching, handling, or dealing with its property which had been taken from it in 1918 which the petitioner states was an intangible asset. There was no condition such as petitioner states, for the findings of the court show that the property of respondent was *confiscated* by the sequestration in 1918. No allocation of any part of the award obtained from the Mixed Claims Commission can ever be made to items covered by the present claim for the reason that no statement as to the basis of the award was ever made. If the award is paid it will become taxable and will be returned as income for the year in which it is paid.

Again we vigorously dissent from the contention of the petitioner in its statement:

> "It may be further stated that the facts show that respondent has not yet sustained any deductible loss by reason of said sequestration,

> and if the claim allowed in its favor by the Mixed Claims Commission is ultimately paid, no deductible loss will be sustained, since the Mixed Claims Commission has in effect determined that the sum of $70,000.00, with the interest specified, will compensate respondent for its loss resulting from said sequestration."
>
> (Brief p. 15.)

The findings of the court, show that respondent sustained a deductible loss by reason of the sequestration of its property in 1918. What the Mixed Claims Commission did in the claim filed with it has nothing to do with respondent's loss in 1918 under the taxing statute. The fact remains that respondent has not been paid anything for its loss deducted in its income and profits tax returns in 1918 either through the Mixed Claims Commission or any other source.

The Question of the Re-enactment of Statute.

The petitioner has set up the section of the 1916 law and regulations thereunder and the various parts of the Revenue Acts of 1918, 1921, and 1924 regarding losses and the regulations relating to same. Suffice to say that respondent has fully complied with subsection 4 of Section 234 of the 1918 Revenue Act and deducted its loss sustained by it in 1918, as it was not compensated for by insurance or otherwise in 1918, and it also charged its loss off its books in 1918. This court needs no light upon the question of construing internal revenue statutes, and especially with reference to the construction to be given subsection 4 of Section

234 of the 1918 law; there should be no difficulty in arriving at the intent of Congress, as the language of the statute is plain and there is no ambiguity in it. Particular construction which never came to the attention of Congress in the re-enactment of statutes containing the same language is of no significance.

Conclusion.

Respondent respectfully submits that it has heretofore shown that the petition for writ of certiorari shows no error of law by the court below, and that therefore, this court is without jurisdiction to grant the writ of certiorari. It is respectfully requested that on the findings and opinion of the court below and the reasons set forth in this brief that the petition for writ of certiorari to the Court of Claims be denied.

Very respectfully,

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